

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
OCTOBER 3, 2017**

**CALL TO ORDER**  
**6:00 pm**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the South Campus Building, 40 11<sup>th</sup> Street West, Suite 200, Kalispell, Montana. Board members present were Ole Netteberg, Gina Klempel, Cal Dyck, Mark Hash and Roger Noble. Rachel Ezell, Erik Mack and Mark Mussman represented the Flathead County Planning & Zoning Office.

There were ten members of the public in attendance.

**APPROVAL OF  
MINUTES**  
**6:00 pm**

Klempel motioned and Netteberg seconded to approve the September 5, 2017 minutes as written. The motion passed unanimously.

**PUBLIC  
COMMENT**  
*(Public matters that  
are within the  
jurisdiction of the  
Board 2-3-103  
M.C.A)*  
**6:00 pm**

None

**BYE BITNEY &  
KATHRYN  
HANSEN  
(FZV-17-06)**  
**6:01 pm**

A request from Bye Bitney & Kathryn Hansen for a variance to property within the Fish Hatchery Zoning District, zoned 'R-1' (*Suburban Residential*) and 'Scenic Corridor'. The applicants are requesting a variance to Section 5.01.030(6) of the Flathead County Zoning Regulations (FCZR) which states "*Without an Administrative Conditional Use Permit showing future construction and placing of the principal structure, no accessory structure or use shall be constructed or established on any lot prior to the time of the substantial completion of the construction of the principal structure to which it is accessory.*" The subject property is located at 841 S Juniper Bay Road in Somers, MT and contains approximately 0.1 acres. The property can legally be described as Tract 8C in Govt' Lot 3 and Tract 4A in Govt' Lot 5 in Section 35, Township 27 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORT**  
**6:01 pm**

Mack reviewed Staff Report FZV-17-06 for the Board.

**BOARD  
QUESTIONS**  
*6:05 pm*

None

**APPLICANT  
PRESENTATION**  
*6:05 pm*

Bye Bitney, 841 S Juniper Bay Road in Somers briefly explained what he was trying to accomplish. The property was platted in 1911 and of the three different groups that have owned them over the years, the three separate deeded parcels have all been one property under the same ownership. He has lived there for 30 years and the property has been under his ownership for 27 years. He pointed out the topography and steep grade of his property and stated the only flat property that he has is the triangle piece where he would like to build a shop to park a car in and work on his boat during the winter. In the past there was a garage at the tip of the triangle and a shed that he removed because it blocked access to that parcel. The neighborhood is upscale houses and trying to squeeze a small house or apartment into that space would not be appropriate given the value of the neighboring properties.

**BOARD  
QUESTIONS**  
*6:05 pm*

None

**PUBLIC  
COMMENT**  
*6:06 pm*

None

**STAFF  
REBUTTAL**  
*6:06 pm*

None

**APPLICANT  
REBUTTAL**  
*6:06 pm*

None

**BOARD  
DISCUSSION**  
*6:06 pm*

Hash asked staff if the two tracts could be joined as one.

Ezell stated she had spoken with the applicants in the past and she thought that had been discussed but the applicants were not in favor of that.

Mack stated you can't have a road going through the middle of the property, you can't create a tract that has a road splitting the property.

Bitney stated it was a private road that the county does not maintain.

Mack said you can't have an easement splitting a lot.

Bitney showed the current road and showed the only level spot to back up his trailer. He also showed the easements for water and sewer that provides services for the neighbors beyond his property.

Noble asked if there would be sewer and water in the shop.

Bitney said it would be easy to do but stated he didn't need more living space he just needed a shop.

Kathryn Hansen, 841 S Juniper Bay Road, stated it is a lovely piece of property but has a driveway that is a little bit scary because of the incline at the top. She needed to get to work every day and for safety sake they park up top. It had always been a thought that someday they would build a garage or a place to park the boats and cars up top. The zoning was put in place in 2008 due in large part because people in the neighborhood didn't want condos and such things. At that time they didn't realize it would impact them for putting a garage on that parcel. She commented she would really like a garage up top especially if there is a winter like last year.

Dyck asked if there were two certificates of survey for the two separate pieces of property.

Bitney said it was actually three tracts. The parcels have always been laid out that way and the banker recommended they keep it that way.

Dyck asked how long the private road had been there.

Bitney said he didn't know how long the easement had been there.

Dyck commented that Bitney kept saying easement, so he wondered if it were not a dedicated road.

Hansen stated that S Juniper Bay Road was a dirt road that serviced all the people that live along the beach but when it was zoned they paved the road.

Dyck and Bitney discussed where the survey pins were located.

Klempel asked if any part of that road had ever been abandoned.

Bitney showed an old county road that had been abandoned in the past. He stated there were probably a dozen home sites on the lake that had been platted in 1911 and the road was in the original plat.

Klempel thought there were only two criteria that the applicants didn't meet.

Mack stated there were four Finding of Fact, numbers 1, 3, 6 and 8 the applicant didn't meet.

Noble asked how big the shop that was proposed would be.

Bitney stated it would be 28' X 40' and said it would give more than 5 feet

setbacks on two sides. He stated there were several neighbors in support that offered to come to the meeting but he didn't think that would be necessary.

Netteberg commented they could build a house there but they couldn't have a garage there and it didn't seem right.

Hash commented that was the zoning.

Netteberg said they could build an apartment above that garage and move forward.

Mack said then it would become a principal dwelling and even if they never used the apartment, it would be there and would be a principal dwelling unit and would meet zoning.

Bitney asked what defines the apartment.

Mussman read the definition of a dwelling unit and clarified.

Bitney asked if they met the definition of principal dwelling would they only need the 5 foot setbacks.

Mussman said it would be 20 feet on all sides.

Mack said you would end up with a 25' area by 44.5' with the side setbacks.

Bitney stated when he measured that with the setbacks he wouldn't be able to get a 16' wide shop in there.

Mussman said regarding the aggregation of the lots, there was a distinct possibility that could be done if requested by the property owner and then there would be a principal dwelling unit in the R-1 zone and they would be down to the 5' setbacks.

Mack stated that because it was a non-conforming lot the width would be less than 150' so the setback would be 10 feet on that lot for the principal dwelling unit.

Mussman said they could put living space in there and apply for an Administrative Conditional Use Permit for a short term rental and win all around.

Dyck asked for clarification regarding the setback.

Mack showed the board where the shop could be placed to meet the setbacks. He also showed the board some drawings of homes that could be built to meet the setbacks. He stated it really came down to Finding of Fact number one and the board needed to decide if it limits reasonable use of the property.

The board and staff discussed the difference between having a shop or a dwelling unit and what the setbacks would be.

Mussman said the applicant could build a shop with living space and then it would become a dwelling unit but it could be primarily used as a shop. Something that meets the definition of dwelling unit would have to meet 10'

side setbacks instead of 5' according to accessory building, unless the board grants the variance because it would be the only building on the piece of property so it cannot be an accessory building because it wouldn't be accessory to anything. If the goal is to have 5' setbacks, then they would need to aggregate the lots they own and the shop would become an accessory building. He commented there are pieces of property that have been aggregated where a private road easement has dissected the property. If it can be avoided that's a good thing but it's not unprecedented.

Dyck reiterated that if the applicant were to put some sort of living space over the top of the shop then the variance becomes a moot point.

Mussman said that was correct and spoke about the only challenge which would be that if they wanted 5' setbacks that would increase to 10'. If he meets the setbacks and creates a dwelling unit or living space above the shop, this variance would not be necessary.

Hansen asked for clarification.

Mussman said if he meets all the setbacks and there is living space that meets the minimum definition of dwelling unit that would give them the 10' side setbacks because the lot is non-conforming. He would still have the 20' setbacks for the front and rear.

Hansen asked Mussman for clarification regarding aggregation.

Mussman asked if any of the structures encroached or straddled the property lines on the other two parcels.

Hansen said no.

Mussman said if they considered aggregating, the triangle shaped lot could be aggregated to one or the other of those two lots and the shop would become an accessory building which would require 5' setbacks.

Netteberg commented that if the board were to deny the variance the applicant wins.

Mussman commented the way it is right now, there are three options for the board to consider. They could massage the findings and approve the variance, or deny it in which case the applicant has two options and that is to develop some living space or to aggregate the triangular lot onto one of the two other lots.

Noble asked if the applicant went to the 10' setbacks what the maximum building footprint would be.

Mack said the buildable area would be roughly 1400 square feet. He estimated the approximate size of the building stating the widest it could be was 25' and it could be roughly 40' long.

**MAIN MOTION  
ON TO ADOPT  
F.O.F.  
(FZV-17-06)  
6:36 pm**

Klempel made a motion seconded by Netteberg to accept Staff Report FZV-17-06 as Findings-of-Fact.

**BOARD  
DISCUSSION  
6:37 pm**

Noble commented that he thought the board couldn't adopt the Findings-of-Fact because they didn't meet four of the criteria.

Hash clarified the motions was to adopt the findings as written.

**ROLL CALL TO  
ADOPT F.O.F.  
(FZV-17-06)  
6:37 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO  
DENY  
(FZV-17-06)  
6:38 pm**

Klempel made a motion seconded by Dyck to accept Staff Report FZV-17-06 as Findings-of-Fact and Deny the Variance.

**BOARD  
DISCUSSION  
6:38 pm**

Hash commented that the board was trying to make everything work for the applicant but they are bound by the criteria they have, and rather than just say no they were trying to brainstorm different ideas for the applicants. He stated that planning staff are very good to work with and the board truly tries to make things work, but the applicants have to meet all the criteria and he would have to vote against the variance because they didn't meet all the criteria but there are other options available to them.

**ROLL CALL TO  
DENY  
(FZV-17-06)  
6:38 pm**

On a roll call vote the motion passed unanimously.

**WILLIAM & RAE  
MARIE  
ANDERSON  
(FCU-17-12)  
6:39 pm**

A request from William & Rae Marie Anderson for a conditional use permit to establish a '*Home Occupation*', specifically an automotive repair business on property located at 287 and 291 Possum Trail, north of Kalispell, Montana. The subject property is approximately 1.6 acres and zoned R-2 (*One-Family Limited Residential*) in the Happy Valley Zoning District. The property can legally be described as Lots 1-4 of Happy Valley Homesites in Section 29, Township 30 North, Range 21 West, P.M.M., Flathead County, Montana.

**STAFF REPORT**  
**6:39 pm**

Ezell reviewed Staff Report FCU-17-12 for the Board.

**BOARD  
QUESTIONS**  
**6:43 pm**

Hash asked about Finding #12 regarding the noise and the applicants having to provide a notarized certification that the noise will not detrimentally affect surrounding property owners.

Ezell said part of the home occupation standards require the applicants submit to the planning office a certification so if someone came into the office to complain there would be documentation, and if there were repeated violations there was a process by which the Conditional Use Permit could be revoked. Condition #3 requires the notarized certification.

Hash asked about the definition of lighting and whether it was a new definition. He felt it was a great definition.

Ezell said she quoted it from the definitions in the regulations.

Klempel asked what was considered outdoor storage.

Ezell said she noted they had to have designated parking spaces and clarified what would constitute outdoor storage.

Hash asked if car parts would be outdoor storage.

Mussman stated disassembled car parts would be considered outdoor storage.

Noble asked about the existing COSA and if it were part of the Happy Valley Subdivision. He stated the COSA was strictly for single family dwellings and asked what the covenants state.

Ezell stated the COSA is part of the Happy Valley Subdivision and the county does not enforce covenants. The lots would have to be re-reviewed under the Sanitation and Subdivision Act. The shop has water but no septic.

**APPLICANT  
PRESENTATION**  
**6:49 pm**

Olaf Ervin of O.C. Ervin Land Surveying, 132 North Fork Trail represented the applicants. He said it was important to note the applicants approached him earlier in the spring thinking they would be moving onto the premises right about this time of year, but ended up having to vacate their previous location and move sooner and that's why it is a violation. It was always their intention to pursue a Conditional Use Permit. He stated there were a few items in the staff report he thought they should speak to and elaborate on and the applicants had a few comments as well. The staff report seems to state they meet almost all of the criteria for a home occupation with a couple of questions. He spoke about finding #3 and the environmental impact regarding generating by-products for disposal greater than the volume and types normally generated by a typical single-family home. For an auto body repair shop the concern would be things like waste oil and fluids from vehicles. The application was supplemented with a brief explanation of how those are dealt with. The applicants are willing to specify that this business wouldn't do lube oil and filter type business and would



confine their changing of fluids to those things that are necessary when they are doing an auto repair of that type. They will limit the amount of fluids being generated. He spoke about finding #6 and said the signage was picked up from the premises they vacated and will be brought into compliance with the new building. He wanted the board to note there was no septic hook-up on the property.

Michelle Anderson, 291 Possum Trail stated they had been in business with Advanced Auto Repair for 20+ years and have always rented. The previous landlord had told them they had access from Baker Avenue in Whitefish to come in the back way to the garage which used to be an auto body shop and a welding shop. They had been looking for several years for a new rental building because the current location was too expensive. When a new business moved in behind them they were told they did not have an easement and couldn't access the back of the garage. They were not able to make the business work with just the one bay door and would not be able to pay the rent or make a living. For that reason they had to move quickly to a location that wasn't really set up for business. They are doing their best to come into compliance. The original plan was to come before the Board of Adjustment to apply for a conditional use permit prior to moving into the new building but the circumstances changed. They are just trying to support themselves as well as their mechanics and their families.

**BOARD  
QUESTIONS**  
*7:00 pm*

None

**PUBLIC  
COMMENT**  
*7:00 pm*

Theresa Hunt, 234 Cooper Trail spoke in favor of the application.

Rhonda Krieger, 110 Taylor Road stated she has lived there for 18 years. She commented that the business seemed to spring up overnight; nobody was notified and none of the neighbors were asked. She spoke about her view from her front porch being an auto body shop with lots of cars parked out front. She said she bought her property to live in the country and stated if there were any way possible she would like a large fence built across Hodgson Road and down Possum Trail so none of the neighbors had to look at the business. She stated she has been woken up by the noise and commented she is disappointed they chose this area for their business, it looks terrible. She feels her property value has dropped.



**BOARD  
DISCUSSION  
7:01 pm**

Hash asked the applicants if there was anything they would like to comment on regarding the neighbors' concerns and asked what the board could do to alleviate those concerns.

Anderson stated this was a quick move and said she plans on beautifying the area and making it soundproof to the neighbors. They keep all the doors closed, they are only open 8am-5pm and are never open on the weekends.

Hash asked about the certification they signed.

Anderson stated they could sign a certification that the noise will not detrimentally affect surrounding property owners. They weren't aware that people could hear them across the road. They keep the back doors closed and would make sure they keep the front doors closed as well. She felt a fence would be tacky but she would like to put in trees and bushes to help block the view and the noise.

Hash asked about a time frame.

Anderson and Ervin stated the conditional use permit allows them a year to meet any conditions.

Ezell spoke about the area where the cars were parked and where the new garage would be located.

Netteberg commented that when they were in Whitefish there were several businesses around them but now they are located in a residential neighborhood and it becomes a good neighbor policy. He asked what the average time any cars would be parked out there.

Anderson stated the cars aren't usually there for long periods of time when they are being worked on. She said a lot of the parked vehicles currently there are privately owned.

Hash asked staff what solution could be done to help the neighbor.

Ezell commented the business would create noise but it could be mitigated by conditions. She didn't recommend a fence because the property is somewhat vegetated and they could easily fit five cars between the house and the proposed garage so the neighbors wouldn't see them.

Hash asked what type of landscaping could be put in to help with the noise.

Ezell pointed out a picture in the staff report and spoke of the location, pointing out all the trees in the area.

Krieger commented that the amount of bushes and trees they would have to put in to make that whole area look residential and not like a business would be very costly. She would like to see a nice looking white fence that would blend with the neighborhood, a site obscuring fence so she couldn't see the cars out front.

Ervin pointed out the application states they would be constructing a new

building and it would be reasonable that they could make it sound insulated. The parked cars would be out of the line of site. He pointed the area out on the site map and said the new building would be closer to Hodgson Road and the existing building would be demolished.

Noble stated that was not made clear in the application.

Ezell stated it is currently an accessory structure in the front yard which is not permitted.

Dyck stated he lives in that community and clarified what the applicants were proposing.

Hash asked where it was stated in the application they had to remove the existing building.

Ezell stated that it was mentioned numerous times in the staff report. She didn't put a condition on it because currently they have a zoning violation and if they don't come into compliance within a reasonable time it will be sent to the County Attorney's Office for further enforcement.

Hash reiterated the application is for the new building as the existing building will be removed due to the violation.

Mussman commented there is a condition that states the applicants have to do what they say they are going to do. Within a year they have to meet what they asked for in the site plan.

Hash asked Krieger her thoughts based on what was made clear to them.

Krieger asked where the new shop would be.

Ezell showed Krieger the site plan and pointed out the location.

Hash once again reiterated the application was for a new proposed shop and the existing shop would be taken care of in another manner.

Ezell commented she doesn't consider this an application for a new shop, she considers it an application for a 'home occupation'. They want to use an outbuilding and that's why staff had to review those criteria.

Klemple stated they would be using the same road for access.

**STAFF**  
**REBUTTAL**  
*7:20 pm*

None

**APPLICANT  
REBUTTAL  
7:21 pm**

None

**BOARD  
DISCUSSION  
7:20 pm**

Noble wanted to make sure it was clear that the application was for a conditional use permit for a shop use in a residential area.

Mussman said it's a conditional use permit for a home occupation that will utilize an accessory building as part of that home occupation.

Noble said the accessory building is a new proposed shop as shown on the site plan and the existing accessory building will be removed as per the application.

Ezell commented the only reason why they are not using the existing structure for the home occupation is because you can't have an accessory structure in the front yard.

Noble asked if they could leave that building there if it were some other building.

Mussman stated probably not because it was set there in violation and is an illegal non-conforming structure. It doesn't pre-date the zoning.

Dyck stated now that the board understands the concept, the new shop and removal of the existing shop, he is okay with it.

Hash asked the applicants what the plan was once they build the new shop. What would they be willing to do to help the neighborhood accept this business?

Anderson said the building would look more like a house than a shop. It would blend in with the neighborhood. There are quite a few trees, they could plant more but there are quite a few trees along the road. It will all be landscaped, it won't be the parking lot they see right now. They live there and want it to look more pleasing.

Ervin commented they also specified the vehicle parking would be screened from Hodgson.

Krieger told the board where she lived and what she sees from there. She commented that the trees are huge and the applicants would have to put in a lot of smaller trees to block the views. She reiterated that she bought her house out there to live in the country.

**MAIN MOTION  
TO ADOPT F.O.F.  
(FCU-17-12)  
7:26 pm**

Dyck made a motion seconded by Netteberg to adopt the Finding-of-Fact as written.

**ROLL CALL TO  
ADOPT F.O.F.  
(FCU-17-12)  
7:26 pm**

On a roll call vote the motion passed unanimously.

**MOTION TO  
APPROVE  
(FCU-17-12)  
7:26 pm**

Dyck made a motion seconded by Netteberg to accept Staff Report FCU-17-12 as Findings-of-Fact and Approve the Conditional Use Permit adding the conditions that the shop would be designed in a way that it would blend in with the community and landscaping that would be appropriate to that design be implemented. The vehicle location needs to be screened by the structure from Hodgson Road. They can park on the south side of the road.

**BOARD  
DISCUSSION  
7:28 pm**

Hash commented that he doesn't want it to look like a salvage yard with fencing all the way around it. This is all compromises and being good neighbors. That's how this is going to work if this is approved.

Klempel mentioned there are some bushes called the 'Great Wall of China' that will screen anything better than a fence. She encouraged the applicants to consider those.

**ROLL CALL TO  
APPROVE  
(FCU-17-12)  
7:29 pm**

On a roll call vote the motion passed unanimously.

**NEW BUSINESS  
7:30 pm**

None

**OLD BUSINESS  
7:30 pm**

Hash asked if the minutes could be more detailed. He felt that last month's minutes didn't have a lot of substance about what people said. The whole board made a lot of comments and those weren't in the minutes. He thought the last batch was too much of a skeleton.

Klempel spoke about a public comment from last month that was talking about the neighborhood plan. Klempel felt that the neighborhood plans, although they are not regulatory, are out of compliance with state law and need to be updated. That information wasn't in the minutes and she wished it had been. She felt that so much of what Mussman put into the application last month was absolutely correct and it should have been in the minutes.

Mussman said there is an argument about minutes and we do have the DVD.

Hash asked if something was appealed, to flush out what the board considered, do they have the ability to look at the information that was before the board.

Mussman stated that we don't do verbatim minutes for any of the meetings. His

personal preference for staffing reasons is that they could be bare bones minutes because if you want to get into the details a person could check out the video recording. When things are appealed and it's necessary to do a transcription then we have that. We are not court reporters. We are in the process of hiring a board secretary and we can draw a nice medium between the skeleton and nowhere close to verbatim.

Fisher stated she tends to put a lot more detail because to summarize all that the board says is difficult for her. She likes to put what they say. Some people summarize a lot better. The public record, the official record is the DVD of the meeting. If somebody requests the official record of the meeting we would give them a copy of the DVD.

Hash commented that if that's the case his concerns were not really a concern as long as the minutes are correct as to what is in there and the DVD backs it up fine. His concern was there were a lot of things that were said that were truly pertinent to him and his decision and it didn't appear in the minutes.

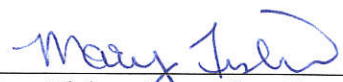
Mussman said as we move forward we'll work on a happy medium.

Hash said not to make more work for ourselves and if we anticipate something is going to be an issue for somebody maybe put more detail in the minutes.

**ADJOURNMENT**  
**7:35 pm**

The meeting was adjourned at approximately 7:35 pm on a motion by Klempel. The next meeting will be held at 6:00 pm on November 7, 2017.

*For*   
\_\_\_\_\_  
Mark Hash, Chairman

  
\_\_\_\_\_  
Mary Fisher, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED // / 7 / 2017